THE CONSTITUTIONAL COURT OF THE REPUBLIC OF LATVIA

JUDGEMENT

ON BEHALF OF THE REPUBLIC OF LATVIA

in Case No. 2012-15-01

Riga, 28 March 2013

The Constitutional Court of the Republic of Latvia composed of: the Chairperson of the Court Hearing Gunārs Kūtris, Justices Kaspars Balodis, Aija Branta, Kristīne Krūma, Uldis Ķinis and Sanita Osipova,

having regard to the application submitted by the Ombudsman of the Republic of Latvia,

on the basis of Article 85 of the Satversme and Para 1 of Section 16 and Para 8 of Section 17(1), and Section 28^1 of the Constitutional Court Law, on 6 March 2013 examined in written procedure the case

"On Compliance of Section 43^6 (3), (5), (7) and (8) of Road Traffic Law with Article 92 of the Satversme of the Republic of Latvia."

The Facts

1. The Saeima of the Republic of Latvia (hereinafter – the Saeima) on 1 October 1997 adopted Road Traffic Law (hereinafter also – RTL), which came into force on 4 November 1997. Initially Road Traffic law did not contain regulation on recording offences with technical means, without stopping the vehicle.

The amendments of 8 July 2003 supplemented RTL with Section 43^6 "Recording of Offences with Technical Means, without Stopping a Vehicle." This

Section, *inter alia*, envisages that road traffic offences may be recorded with technical means (photo devices or video devices), without stopping the vehicle (hereinafter also – automatic recording of an offence, an automatically recorded offence). This Section also provides: if the person, who has been driving the vehicle at the moment when the offence was committed, the administrative penalty for the offence shall be imposed upon the possessor or the owner (hereinafter also – the owner), except for the case, if at the moment of committing the offence, the vehicle was not in the possession of the owner because of other person's unlawful activities.

The Saeima amended Section 43^6 of RTL by adopting laws "Amendments to Road Traffic Law" on 26 May and 15 December 2005, 15 February 2007, 19 February 2009, 15 December 2011 and 23 February 2012.

Currently the following wording of Section 43^6 is in force:

"Section $43.^6$ Special Features in the Administrative Process in relation to Offences, which are Recorded with Technical Means, without Stopping a Vehicle

(1) An offence may be recorded with technical means (photo devices or video devices), without stopping a vehicle. The procedures, by which technical means (photo devices or video devices) are to be used, shall be determined by the Cabinet.

(2) For an offence, which is recorded with technical means (photo devices or video devices), without the stopping of a vehicle, only a minimum a fine intended for a driver shall be applied.

(3) If an offence has been recorded with technical means (photo devices or video devices), without the stopping of a vehicle, in respect of this without the presence of the vehicle driver an administrative violation report – decision shall be drawn up, where the following information shall be indicated:

1) the date of drawing up of the report – decision;

2) the authority, the official of which has imposed the penalty, and the position, given name and surname of the relevant official;

3) the date and time of the determination of the offence;

4) the place of commitment of the offence (the name, address of the city or other populated area);

5) the make of the vehicle and State registration number;

6) the reference to infringed legal provisions (Section of the regulatory enactment, Paragraph, Clause or Sub-clause thereof);

7) the decision regarding the imposing of the fine and amount of fine;

8) the time period for payment of the fine;

9) the requisites for the payment order and the authorities in which it is possible to pay the fine;

10) the procedures for contestation (appeal) of the decision taken;

11) information regarding the consequences, which arise, if the fine is not paid; and

12) a photo, on which the vehicle and the State registration number is shown.

(4) Information regarding the decision taken shall be entered into the State Register of Vehicles and Drivers or the information system for the tractor-type machinery and the drivers thereof by the State Police.

(5) A report-decision shall be sent to the holder indicated in the vehicle registration certificate or if a holder is not indicated – to the owner (possessor) of the vehicle not later than within three working days after the taking of the decision. If the offence has been committed with a vehicle that is permanently registered in a foreign country, but for the use of which in Latvia in the cases determined in Section 9, Paragraph five of this Law a permit has been received, a report-decision shall be sent to the person who has received the permit. If an offence has been committed with a vehicle that is transferred for trade (registration number plates of the state of trade have been installed for it or a vehicle has been registered in the trade register), a report-decision shall be sent to a merchant who performs the trade of the relevant vehicle. The report-decision shall be valid without the signature of the official imposing a fine. The report-decision shall come into effect on the seventh day from the submission thereof in the post.

(5^1) The State Police may enter into delegating agreement with the Road Traffic Safety Directorate in which it may be provided that the Road Traffic Safety Directorate shall, within the scope of the competence thereof, process the information in the State Register of Vehicles and Drivers that has been received from technical means regarding the relevant violation, prepare draft report-decision referred to in Paragraph three of this Section which it shall send to the State Police for evaluation and taking of

a decision, as well as after the taking of the relevant decision shall send the referred to report-decision to the person referred to in the first sentence of Paragraph five of this Section. The Cabinet shall determine the amount of the remuneration and procedures for the granting thereof which the Road Traffic Safety Directorate receives for the services referred to in the first sentence of this Paragraph.

(5^2) If a person referred to in the first, second and third sentence of Paragraph five of this Section was not driving a vehicle at the time of committing an offence, he or she shall transfer (send) a report-decision to a driver who drove the vehicle at the time of registration of the offence.

(5^3) A report-decision may be contested and appealed by a driver who was driving the vehicle at the time of registrations of the offence.

(6) The fine imposed shall be paid within the time period specified in the Latvian Administrative Violation Code.

(7) If the imposed fine is not paid within the time period specified in the Latvian Administrative Violation Code, a notation shall be made in the State register of vehicles and Drivers or the information system for the tractor-type machinery and the drivers thereof regarding a prohibition until the fine is paid to perform the State technical inspection for the vehicle with which the offence was committed, and to register it in the State Register of Vehicles and Drivers or the information system for the tractor-type machinery and the drivers thereof. Such notation regarding the prohibition to perform the State technical inspection of the vehicle shall not be made or also the notation done shall be extinguished if it is determined that at the moment of committing the offence the vehicle was not in the possession of the owner (holder, possessor) due to the unlawful activity of other persons.

(8) If the fine imposed for the offence, which is recorded with technical means (photo devices or video devices), without stopping the vehicle has not been paid within the time period specified in the Latvian Administrative Violation Code, it shall be recovered from the holder indicated in the vehicle registration certificate or if a holder is not indicated – to the owner (possessor) of the vehicle, except in the case when at the moment of committing the offence the vehicle was not in the possession of the owner (holder, possessor) due to the unlawful activity of other persons."

2. The Applicant – **the Ombudsman of the Republic of Latvia** (hereinafter – the Ombudsman) – holds that the contested norm is incompatible with the first and the second sentence of Article 92 of the Satversme of the Republic of Latvia (hereinafter – Satversme).

2.1. Section 43^6 (7) and Section 43^6 (8) are held to be incompatible with the first sentence of Article 92 of the Satversme by envisaging adverse consequences for the vehicle's owner, without ensuring sufficient legal remedies for preventing these consequences. Namely, if the term for paying the fine imposed for the automatically recorded offence is not met, the adverse consequences set in vis-à-vis the vehicle's owner, irrespectively of the fact, whether he had been the person driving the vehicle at the moment when the offence was committed. The regulation of the Latvian Administrative Violations Law (hereinafter also – LAVC) and Road Traffic Law envisage the possibility to appeal against the report-decision only for one person, the person, who at the moment when the offence was recorded drove the vehicle, – the driver of the vehicle. Thus, the owner of the vehicle, if he was not driving the vehicle at the moment when the offence was committed, has no possibility to contest or to appeal against the report-decision and the decision on enforced collection of the unpaid fine, which is adopted in case if the monetary fine imposed by the report-decision is not paid voluntarily.

The Ombudsman holds that the natural person, who is such an owner of the vehicle, who has not committed the automatically recorded offence, in fact, has no effective possibilities for turning against the offender with a regress claim for compensation of damages that the vehicle's owner has incurred by paying the fine instead of the driver, who committed the offence. Pursuant to Section 10 of the Civil Procedure Law (hereinafter – CPL) the parties exercise their procedural rights in adversary form, but pursuant to Para 3 of Section 129(2) of CPL, documents confirming the facts, on which the claim is based, must be appended to the statement of claim. Para 12 of Section 43^6 (3) sets out that the photo, on which the vehicle and the State registration number are shown, must be indicated in the report-decision. Usually only legal persons record in documents the handing over and the receipt of a vehicle.

The Ombudsman admits that the right to a fair trial is not absolute and may be restricted, however, only insofar, as these are not taken away substantially. Since in the case under examination the vehicle's owner is neither able to defend his rights in the administrative procedure, nor according to the civil procedure, he has been deprived of these rights substantially.

2.2. The Ombudsman holds that the third and the fifth part of Section 43^6 of RTL are incompatible with the second sentence of Article 92 of the Satversme, as they do not envisage the obligation of the State to identify and punish the actual perpetrator of the offence. This situation is to be recognised as a violation of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter – the Convention).

The norms of LAVC envisage imposing a punishment upon an identifiable person, as well as informing this person about the adopted decision. For example, Section 274 of LAVC envisages that the decision in a case of administrative violation must contain information regarding the person, to whom the case to be adjudicated applies. Moreover, Section 20(5) of RTL defines the obligation of the vehicle's owner to provide information, upon the request of the State Police, on the person, who drove the vehicle, if at the moment of detecting the violation the driver was not identified. However, the procedure for adopting a decision set out in Section 43^6 of the RTL as a special legal norm, envisages a solution, which differs from the provisions of LAVC and allows the State to disregard the basic principles of the administrative violations procedure.

The Ombudsman holds that this procedure is incompatible with the presumption of innocence, i.e., that every person is to be held innocent until his or her guilt has been proven in accordance with a procedure envisaged in law. Section 271 of LAVC defines the obligation of an institution to conduct investigation to identify the guilty person. Therefore, the institution has the obligation to identify the concrete person, who committed the violation defined in Section149^8 of LAVC – exceeded the allowed speed limit.

Section 9(3) of LAVC envisages that the special features of the administrative liability for the owner of a source of increased danger, also a vehicle, may be specified in other laws. However, the regulation included in Section 43^6 of RTL cannot be

considered the outcome of defining such liability, since this legal norm does not define the liability of the vehicle's owner.

In this regard, it must be taken into consideration, that an automatically recorded offence can be committed both by the vehicle's owner and by another person. If the owner of the vehicle is not the same person, who was driving the vehicle at the moment when the offence was committed, then the notification about the unpaid penalty directly creates adverse consequences and imposes obligations upon a third person – the owner of the vehicle. However, pursuant to Section 22 of LAVC, the administrative penalty is a means of liability imposed upon a person, who has committed an administrative violation, in the spirit of law abiding and respecting provisions of social life, as well as to prevent the offender from committing new offences.

3. The institution, which adopted the contested act – **the Saeima** –, holds that the contested norm complies with Article 92 of the Satversme.

The Saeima is of the opinion that the Ombudsman did not intend to contest the compatibility of separate norms, which envisage punishment for automatically recorded offences, with the principle of presumption of innocence, enshrined in the second sentence of Article 92 of the Satversme, but the compatibility of the whole institution as such. Therefore, it must be assessed in the case, whether the contested norms substantially comply with the requirements of the presumption of innocence, not the compatibility of each contested norm with the second sentence of Article 92 of the Satversme.

The Ombudsman in the application did not contest the compatibility of those legal norms, which define the circle of persons with the right to appeal the report-decision, with the first sentence of Article 92 of the Satversme. Within the scope of the claim defined in the application, it is impossible to assess the compatibility of these norms with Article 92 of the Satversme.

3.1. The Saeima notes that the right to a fair trial is not absolute and may be restricted. The right to a fair trial does not mean that a person should be guaranteed the right to have every issue, important for him, settled in court. The procedure for

contesting and appealing against the report-decision, regulated in Section 43^6 of the RTL, is a special legal regulation, pursuant to which only the driver of the vehicle has the right to appeal against the report-decision.

Since a vehicle is a source of increased danger, a situation, when the vehicle's owner, under ordinary circumstances, does not know, who has been driving the vehicle that he owns, is inadmissible. Moreover, the fact that in accordance with Law on the Mandatory Civil Liability Insurance of the Road Vehicle Owners he is obliged to insure his civil liability, also points to the special responsibility of the vehicle's owner. A similar duty of care can be demanded from the owner of the vehicle also in administrative legal relationships. The contested norms envisage regulation on typical cases, when no extraordinary circumstances have set in and when the vehicle's owner himself has transferred the vehicle to another person. This means, first, that he should know this person, and, secondly, should be able to agree upon common actions in the case, if this person has violated road traffic rules.

Thus, the Saeima holds that the obligations of the vehicle's owner, envisaged by the contested norms, are balanced with the responsibility imposed upon him by the vehicle as a source of increased danger. The administrative procedure in an institution, in its turn, is ensured to the owner of the vehicle in the untypical cases, envisaged by the seventh and eighth part of Section 43^6 of RTL.

3.2. The Saeima notes that the second sentence of Article 92 of the Satversme envisages the same of scope of rights protection as Article 6 of the Convention. Therefore, it cannot have broader scope than the aforementioned norm of the Convention.

The Saeima does not uphold the opinion expressed in the application that the procedure envisaged by the contested norms should be qualified as punishing for a criminal offence in the understanding of Article 6 of the Convention. Exceeding the legitimate speed limit, as to its nature, cannot be considered a criminal offence. In order to perceive any penalty as a criminal punishment, it should be so stringent that it can be equalled to a criminal punishment. The obligation to pay a monetary fine, unless it exceeds a certain limit, *per se* cannot be automatically perceived as a criminal punishment in the meaning of the Convention.

Pursuant to Section 149^8 (24) of LAVC, the most severe punishment, which can be imposed upon a person for an automatically recorded violation, is four hundred lats. However, even this, the most severe possible administrative penalty, does not reach the minimum amount of monetary fine envisaged in criminal law. Furthermore, other parts of Section 149^8 of LAVC envisage even much smaller amounts of fines. Hence, the procedure envisaged by the contested norms cannot be perceived as a criminal case in the meaning of Article 6 of the Convention and does not fall within the scope of the Convention. This, in its turn, means that neither does it fall within the scope of Article 92 of the Satversme.

4. The summoned person – **the Ministry of Interior** – holds that the contested norms are compatible with Article 92 of the Satversme.

The Ministry of Interior emphasizes that the addressee of the report-decision, mentioned in Section 43^6 (3) of RTL, is the driver of the vehicle, not its owner. In view of the fact that in the case of automatic recording of an offence, the State Police does not know, who the driver of the vehicle is, the report-decision is sent to the owner of the vehicle. If the owner was not driving the car at the moment when the offence was committed, then he, in accordance with Section 43 (5^2) of RTL, has the obligation to hand over the received report-decision to the respective owner of the vehicle. Thus, in no way it can be claimed that the owner of the vehicle, if he was not driving the vehicle at the moment when the offence was committed, is punished for this offence or accused of it.

The adverse consequences – the obligation to pay the fine – for the owner of the vehicle set in only if the driver of the vehicle has not paid the administrative fine imposed upon him within the term set out in LAVC. The Ministry of Interior holds that in this case the liability of the vehicle's owner follows from the second part of Section 2347 of the Civil Law, since the owner of the vehicle, as a careful and heedful master should know, who had been driving the vehicle on the particular occasion. Moreover, the vehicle's owner has to pay the administrative fine only in case, if he has acted irresponsibly and does not now, who has been using his vehicle. However, in this case the vehicle's owner acquires the right to request the sum of money from the

driver of the vehicle in the amount of the fine paid, in accordance with the Civil Law provisions.

As regards the legal remedies available for the vehicles owner, the Ministry of Interior notes that the vehicle's owner has the right to appeal against the notification on the collection of the unpaid fine, which is issued in those case, when the monetary fine imposed has not been paid within the term stipulated in LAVC.

5. The summoned person – **the Ministry of Transport** – holds that the contested norms comply with Article 92 of the Satversme.

The Ministry of Transport is of the opinion that the procedure, according to which the offences of exceeding the legal speed limit are automatically recorded and punishment imposed for such offences, cannot be equalled to a criminal case in the understanding of the Convention.

The Latvian legal regulation with regard to the automatic recording of offences was established in 2005, and since then the conception of application of the procedure for the respective punishment has remained unchanged: in those situations, when offences are recorded automatically, the concrete offender is not searched for. This conception was developed after assessing the experience of other countries. Moreover, the European Commission had initiated the establishment of such a procedure, by calling the European Union member states to decrease the administrative expenses in the process of punishing offenders and develop, to the extent possible, the use of technical equipment for recording offences, without searching for the particular offender and envisaging the liability for offences for the owners of the vehicles.

The Ministry of Transport also notes that pursuant to the Civil Law, a vehicle is a source of increased danger, but Section 9(3) of LAVC stipulates that the special features of the liability of the owner or the possessor of source of increased danger can be defined also in other laws. Thus, the differences in the regulation included in Section 43^6 of RTL from the general processing of administrative cases, envisaged by LAVC, can be justified.

6. The summoned person – **the Ministry of Justice** – holds that the Ombudsman in the application has pointed to the incompatibility of all contested norms with the presumption of innocence. I.e., the fact that the guilt of the vehicle's owner for committing the offence is being presumed, without establishing, whether the vehicle's owner has at the same time been also the driver, who committed the offences envisaged in Section 149^8 of LAVC, the liability for which is envisaged only for the driver of the vehicle, is incompatible with the presumption of innocence.

The presumption of innocence has been enshrined in Article 92 of the Satversme as a fundamental principle, to be abided by in proving a person's guilt; however, it is not absolute and it can be limited. Exemptions to the presumption of innocence may be envisaged in law, if proving a person's guilt in specific categories of cases is impossible or is so disproportionally cumbersome, that it allows the person, who actually committed the legal offence, to escape from liability and punishment. Hence, in the cases of administrative violations in some categories of administrative violations, the law allows deviating from the presumption of innocence, at the same time envisaging another procedure for meeting the obligation of proving, for example, the legal presumption of a fact or the strict liability.

The Ministry of Justice is of the opinion that the deficiency of the contested norms is rather manifested in the fact that they do not envisage the possibility for a person to refute the legal presumption of a fact, i.e., that at the moment when the offence was committed the vehicle had been driven by its owner. Thus, the owner of the vehicle has no possibility to express his opinion and to submit evidence prior the decision on imposing a penalty is adopted.

However, it must be taken into account that Section 43^6 of RTL and the contested norms that it contains do not provide an exhaustive definition of the procedure for making the vehicle's owner administratively liable. This Section of RTL does define a series of special features of processing administrative offences within the particular category of cases, however, the norms of LAVC, which define the basic principles case processing, can be simultaneously applied to the processing of any administrative violation. For example, in accordance with Para 3 of Section 286 of LAVC, an official, who prepares a case for examination, verifies, whether all supplementary materials requested for the examination of the case, are present, if such

have not been requested, requests them, and, thus, gives the possibility to the person to be made administratively liable to express his opinion on the charge brought against him, as well as to submit evidence in case of refuting a presumption, if such had been applied. Thus, if the contested norms are not regarded as special legal norms with regard to LAVC, then, by interpreting and applying them in interconnection with the norms of LAVC, it is possible to establish such a procedure, which abides by the requirements regarding the application of the legal presumption of a fact.

7. The summoned person – **the State Police** – notes that it, when examining automatically recorded violations of road traffic rules, does not conduct activities upon its own initiative to identify the natural person, who at the moment when the offence was committed was driving the car, neither does it request the vehicle's owner to provide information about the person, who drove the vehicle or was entitled to use it.

The State Police informs that during the period from 1 January 2012 to 30 September 2012 approximately in 40 per cent of all contested reports-decisions these were contested by the possessors or owners of the vehicle, but in 60 per cent of the cases – by the persons, who at the moment when the offence was committed were driving the vehicle (*see Case Materials, p.143*).

8. The summoned person – **Dr. iur. Gatis Litvins** – holds that the contested norm is incompatible with Article 92 of the Satversme.

The exemption to the general obligation of the State in the field of administrative violations to identify the offender has been established in Road Traffic Law, the legal norms included in it are the special legal norms vis-à-vis the general legal norms included in Administrative Procedure Law and Latvian Administrative Violations Code. Deviations from the general rules on the processing of administrative offences are admissible in the special legal norms. However, there are certain limits to such deviations. The special regulation may change the procedural rules of the general regulation, for example, terms, jurisdiction of cases and the dispute resolution; however, it must comply with the fundamental principles of administrative violations procedure.

G. Litvins indicates that in the process of administrative violations the State has the right to envisage legal consequences to a person, whose actions or lack thereof pose a threat to the interests of the State and society. However, in accordance with the contested norms, the legal consequences for exceeding the legal speed limit set in for the owner of the vehicle, which has been the means for committing the offence, but not for the driver of the vehicle. Hence, the adverse consequences for the vehicle's owner set in not for exceeding the legal speed limit, but for entrusting his property to someone else. However, a vehicle is an object of free economic circulation, and, hence, one cannot presume that a vehicle owned by a natural person will always be driven by this person.

The manifestation of the legal presumption of a fact is enshrining a presumption about a concrete fact in a legal norm and that the State does not have to prove this fact. However, the legal presumption of a fact is not absolute. The principle of proportionality and the presumption of innocence must be complied with in enshrining it into legal norms and in application; likewise, effective possibilities for refuting the legal presumption of a fact must be envisaged. The legal presumption of a fact may not turn into the presumption of guilt. If a private person contests a fact presumed in law, he should have the possibility to express grounded doubts about the compliance of such presumption with the reality and to prove the opposite. Moreover, in order to apply the legal presumption of a fact at all, the State should first of all prove the *prima facie* connection between the private person and the offence.

G. Litvins does not think that the regulation included in the contested norms effectively helps to reach the purpose of imposing administrative penalties and to ensure the inevitability of punishment. If the guilty person is not identified and his behaviour is not rectified with appropriate and proportional punishment, then the probability that the person will not re-offend is very small. Therefore the punishment should be personal. Punishments and other adverse legal consequences are meaningless, unless these are aimed at influencing the offenders and, thus, in the long-term at improving the road traffic safety. The purpose of the punishment is not reached, if the impact upon the offender is indirect – with the mediation by the possessor or owner of the vehicle, in civil law procedure.

G. Litvins recognises that the vehicle's owner cannot justify himself by claiming that he did not know whom he entrusted his vehicle with, and notes that by envisaging the obligation of the possessor or owner of a source of increased danger to participate in the investigation of administrative offences and by the State using such technical means that would ensure as extensive information as possible about the offence, it would be possible to identify effectively and easily the identity of the offender and to prove his guilt. Adverse legal consequences for the vehicle's owner should be envisaged in case he refused to provide information to state institutions about the driver of the vehicle. Thus, there are other, alternative possibilities for ensuring the effectiveness of public administration, simultaneously limiting the cases when private persons exaggeratedly insist upon their rights, by groundlessly contesting and appealing against the decisions adopted by state institutions.

The Substantive Part

9. If the norm, which has been contested by the application to the Constitutional Court, pertains to a vast totality of different situations, the Constitutional Court may need to specify the extent, to which it is going to assess the norms contested by the application (*see Judgement of 19 June 2009 by the Constitutional Court in Case No. 2008-47-01, Para 6).* The parties to the case analyse these norms to the extent they envisage procedural "special features" with regard to the administrative violations referred to in Section 149^8 of LAVC, which are manifested as not abiding by the set speed limit and which are automatically recorded (*see Case Materials, pp. 4, 10, 47,136 and 155).*

It would be possible to apply the contested norms, to the extent they envisage the possibility to record violations with video equipment, not only for the administrative violations envisaged from Section 149^8 (1) to Section149^8 (24) of LAVC, but also for other violations envisaged in the sections of LAVC Chapter ten "a". However, neither the application, nor the written reply examines the application of the contested norms in this regard.

Thus, in the framework of the case under review the Constitutional Court shall examine the contested norms to the extent they define the processing of

administrative violations envisaged in Section 149^8 (1) to Section 149^8 (24) of LAVC.

10. In view of the claim defined in the application, the case under review has been initiated only regarding the compliance of part three, five, seven and eight of Section 43^6 of RTL with Article 92 of the Satversme. However, the application also expresses doubts concerning the compatibility of other parts of Section 43^6 of RTL with norms of higher legal force (*see Case Materials, pp. 9 –10).*

The Saeima, however, holds, that the application contests the whole legal institution established by Section 43^6 of RTL, i.e., the regulation on automatic recording of offences and the regulation on the imposition of penalties for offences recorded in this way and the procedure of their enforcement (hereinafter – the Procedure) *(see Case Materials, p.45).*

Thus, the parties to the case hold that the Procedure as a uniform regulation is defined by the contested norms, as well as by other norms of Section 43^6 of RTL, which regulate the aforementioned issues (hereinafter – the contested regulation).

Thus, the Constitutional Court must decide, whether in the case under review the limits of the claim can and should be expanded and whether it should assess the compliance of the whole contested regulation with Article 92 of the Satversme.

10.1. The Constitutional Court may expand the limits of the claim, by abiding with universally known criteria, first of all, "the concept of close connection". To conclude, whether in a specific case the limits of the claim can and should be expanded, first of all, it must be determined, whether the norms, with regard to which the claim is being expanded, are so closely connected with the norms, which are *expressis verbis* contested in the case, that the assessment is possible within the framework of the same substantiation and whether it is necessary for adjudicating the concrete case; and, secondly, whether the expansion of the limits of the claim is necessary for complying with the principles of the Constitutional Court legal proceedings (*see Judgement of 3 April 2008 by the Constitutional Court in Case No. 2007-23-01, Para 17, Judgement of 25 November 2010 in Case No. 2010-06-01, Para 17.1; and Judgement of 20 October 2011 in Case No. 2010-72-01, Para 15).*

10.2. Both the application and the written reply assess Section 43^6 of RTL, to the extent it defines the Procedure, as a uniform regulation. Some stages or aspects of the Procedure are regulated not only by the contested norms, but also by other norms of Section 43^6 of RTL, which have not been contested, and all these norms are closely interconnected. Thus, Section 43^6 (1) of RTL is the legal basis for automatic recording of offences, but the second part of this Section defines the type and amount of penalties for the respective offences. Section 43^6 (4) and Section 43^6 (5^1) of RTL of RTL regulate the technical proceedings of processing offences and defines the jurisdiction of state institutions in this field. Finally, Sections 43^6(5^1), (5^2) and (5^3) of RTL set out the rights and obligations of the vehicle's owners in the process regarding such offences. These norms, which have not been contested *expressis verbis* in the application, influence the content and scope of the contested norms. Thus, comprehensive and unbiased examination of the case requires expanding the limits of the claim.

It is possible to expand the limits of the claim, since the written reply and also the opinions of the summoned persons, essentially, assess not only the contested norms, but also the whole contested regulation. Thus, it is possible to assess the contested regulation within the framework of legal substantiation provided in the case.

It must be taken into account that the case was initiated upon an application submitted by the Ombudsman. Para 8 of Section 17(1) of Constitutional Court Law and Section 13(8) of Law on Ombudsman provide that the Ombudsman has the right to submit an application regarding initiation of a case at the Constitutional Court, if the institution, which adopted the contested act, has failed to rectify the identified deficiencies within the term set by the Ombudsman. Even though the aforementioned norms regulate the initiation of a case at the Constitutional Court and do not directly apply to the extension of the limits of the claim upon the Ombudsman's application, however, the case materials prove that the Ombudsman had repeatedly turned to the Saeima, requesting introduction of amendments not only to the contested norms, but to the whole of contested regulation (*see Case Materials, pp. .23 – 30).* Thus, if some of the aspects in the contested regulation were not examined in the framework of the case under review, the Ombudsman could submit an application to the Constitutional Court

with the objective of examining regulation, which already had been examined. A situation like this would be incompatible with the procedural economy.

Thus, the Constitutional Court, within the framework of the case under review, shall assess the compatibility of the legal institution envisaged in Section 43^6 of RTL – the regulation on automatic recording of offences and the regulation on imposing penalties for such offences and enforcement of them – as a uniform legal regulation, with Article 92 of the Satversme.

11. Article 92 of the Satversme provides: "Everyone has the right to defend his or her rights and lawful interests in a fair court. Everyone shall be presumed innocent until his or her guilt has been established in accordance with law. Everyone, where his or her rights are violated without basis, has a right to commensurate compensation. Everyone has a right to the assistance of a counsel."

In accordance with the claim defined in the application, the case has been initiated regarding the compatibility of the contested norms with the whole of Article 92. The content and scope of each sentence of this Article has already been established in the case law of the Constitutional Court.

The first sentence of Article 92 of the Satversme enshrines the rights of every person to defend his or her rights and lawful interests in a fair court. The concept "fair court", mentioned in it, contains two aspects, i.e., "fair court" as an independent institution of the judicial power, which hears the case, and "fair court" as due procedure for hearing the case, appropriate for a judicial state (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 2 of the Substantial Part, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 11.1).*

A fair court, as due judicial procedure, appropriate for a judicial state, covers a number of interconnected elements, for example, the right to access to court, the principle of equality of parties, the right to be heard, the right to a reasoned court ruling, the right to appeal against the adopted ruling. These are interconnected rights (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 8.2, and Judgement of 17 May 2010 in Case No. 2009-93-01, Para 8.3).*

The second sentence of Article 92 of the Satversme envisages that everybody is to be considered innocent, until his or her guilt has not been established in accordance with law. One of the fundamental principles of a judicial state – the presumption of innocence – is enshrined in this Section *(see Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 4)*. The principle *nullum crimen, nulla poena sine lege* also follows from the wording of the second sentence in Article 92 of the Satversme: a person may be recognised as guilty and punishment imposed only in connection with such activities of the person, which have been recognised as unlawful in accordance with law (*see Judgement of 16 December 2008 by the Constitutional Court in Case No. 2008-09-0106, Para 4.2).*

The application, as well as the opinions of the summoned persons and the case materials contain arguments for the incompatibility of the contested regulation with the first sentence of Article 92 of the Satversme in connection with such aspects of the right to fair court as a person's right to access to court and the right to be heard. The written reply and the opinions of other summoned persons, in their turn, mainly assess the compliance of the contested regulation with the presumption of innocence, i.e., the second sentence of Article 92 of the Satversme.

Thus, for example, the Ombudsman notes in the application that, *inter alia*, the rights guaranteed in Article 92 of the Satversme depend upon the possibility to appeal against the adopted decision (*see Case Materials, p.9*), however, the vehicle's owner, unless he is the person, who committed the offence, has not been envisaged the right to contest a decision, which causes adverse consequences (*see Case Materials, pp. 9 – 10)*. The Saeima, however, holds that the application contains legal substantiation only with regard to the compliance of the contested regulation with the presumption of innocence (*see Case Materials, p.44*).

However, it is within the jurisdiction of the Constitutional Court, not that of the institution, which has adopted the contested act, to decide for which legal norm the legal substantiation has been provided. At the stage of initiating the case, this is decided by the Panel of the Constitutional Court. However, even if the Panel of the Constitutional Court has refused to initiate a case regarding the claim defined in the application or a part thereof, the Constitutional Court, taking into consideration the principles of the legal proceedings at the Constitutional Court, if it is necessary for

systemic interpretation of the contested norm, may verify the compliance of the contested norms with norms of higher legal force also in that part of the claim, with regard to which the case has not been initiated (*see Judgement of 2 November 2006 by the Constitutional Court in Case No. 2006-07-01, Para 14)*. The Constitutional Court, irrespectively of the opinion expressed by the institution, which has adopted the contested act, regarding the limits of the claim, has the right to examine the compliance of the contested regulation with the part of a norm with higher legal force, with regard to which the case has been initiated. Moreover, while the case was being prepared, additional questions were put to the Saeima with regard to this part of the claim (*see Case Materials, pp. 130 – 134)*, it had familiarised itself with the case materials and, in accordance with Section 28^1 (2) of Constitutional Court Law, had the right to express its opinion. However, the Saeima did not exercise this right.

Thus, the Constitutional Court will examine also the compatibility of the contested regulation with the first and the second sentence of Article 92 of the Satversme, in view of the fact that these sentences envisage closely interconnected rights.

12. The insight that the norms of international fundamental human rights and the practice of their applications on the level of constitutional law serve as a means of interpretation for establishing the content and the scope of fundamental rights and the principle of judicial state has been enshrined in the case law of the Constitutional Court, insofar this does not lead to decreasing the scope of fundamental rights enshrined in the Satversme or restriction of these rights (*see Judgement of 13 May 2005 by the Constitutional Court in Case No. 2004-18-0106, Para 5 of the Substantive Part; Judgement of 19 October 2011 in Case No. 2010-71-01, Para 12.1, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 11.2).*

The Constitutional Court has concluded that the first and the second sentence of Article 92 first and foremost should be interpreted in interconnection with Article 6 of the Convention and Article 2 of its 7^{th} Protocol. At the same time, the finding that the concept included in Article 92 of the Satversme, one's "rights and lawful interests", is broader than the right to fair court in connection with "validity of criminal charge" of Article 6 of the Convention is embedded in the case law of the Constitutional Court,

insofar this pertains to such elements of fair court as the accessibility of court or the right to be heard (*see Judgement of 5 March 2002 by the Constitutional Court in Case No. 2001-10-01, Para 5; and Judgement of 5 November 2008 in Case No. 2008-04-01, Para 10.2).* Other elements of the right to fair court, including the presumption of innocence envisaged by the second sentence of Article 92 of the Satversme, belong to those rights included in Article 92 of the Satversme, which must be ensured only in examining cases regarding "validity of criminal charge" *(compare to Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 10.3).*

Thus, to establish to level of protection for the fundamental rights included in Article 92 of the Satversme in the particular case, the Constitutional Court shall first of all assess, whether the contested regulation is to be perceived as part of the process, covered by the scope of Article 6 of the Convention.

13. The case materials contain substantiation of both the opinion that the administrative violations envisaged by the norms of LAVC and for which penalties are applied in accordance with the contested regulation fall within the scope of the first and second part of Article 6 of the Convention (see *Case Materials, pp. 7 – 8; 137 and 154 – 155*), and the opinion that such violations do not fall within the scope of the Convention, since they are not of criminal law nature (*see Case Materials, pp. 46 and 146).*

The right to a fair trial, guaranteed by Article 6 of the Convention, refers only to the process, which is linked with the "validity of the charge brought against a person in a criminal case" (the first part of Article 6 of the Convention) or accusation of "committing a criminal offence" (the second part of Article 6 of the Convention), or for to determine the "civil rights and obligations" of such person (the first part of Article 6 of the Convention). The Constitutional Court has reiterated that the concepts "criminal case" and "criminal offence" must be interpreted autonomously and that the outcome of such interpretation may differ from the understanding of this concept in Latvian national law (*see, Judgement of 20 June 2002 by the Constitutional Court in Case No. 2001-17-010, Para 6.1, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 13).*

13.1. The Constitutional Court has indicated three alternative criteria to apply in order to establish, whether the respective situation falls within the scope of the concepts "the determination of a criminal charge" and " charge with a criminal offence" used in Article 6 of the Convention. The criteria are as follows:

1) the qualification of the particular offence in the national legal acts, linking these with criminal law;

2) the nature and severity of the particular offence;

3) the severity of impending punishment to the person for the particular offence.

To recognise the violation as being "criminal offence" in the meaning of Article 6 of the Convention, it suffices, if this offence complies with even one of the aforementioned criteria (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 10.1)*. The Constitutional Court has defined these criteria by referring to the judicature of the European Court of Human Rights (hereinafter – also ECHR) (*see Judgement of 8 June 1976 by ECHR in the case "Engel and Others v. the Netherlands", Para 82)*. Even though the judicature of the European Court of Human Rights has evolved following the aforementioned Judgement by the Constitutional Court, these criteria, essentially, have remained unchanged *(see, for example, Judgement of 10 February 2009 by ECHR in the case "Sergey Zolotukhin v. Russia", Para 52 –56).*

13.2. The Constitutional Court, taking into consideration the aforementioned criteria, shall assess, whether the application of penalties for the administrative violations envisaged by Section 149^8 of LAVC, part one to part twenty-four, falls within the scope of Article 6 of the Convention.

13.2.1. The contested regulation is included in a special law – Road Traffic Law, but the administrative penalty – in the Latvian Administrative Violations Code. Thus, from the perspective of Latvian national law, this administrative penalty does not fall within the field of criminal law. Thus, the application of a penalty like this does not comply with the first criterion.

13.2.2. In accordance with the judicature of the European Court of Human Rights, it is possible to infer the nature of the violation both from the nature of the violation defined by the legal norm, and from its legal consequences. If the issue under

examination is the nature of the violation, then the circle of persons, to whom the regulation applies, is of special importance. The fact that the regulation is aimed at society in general points to the criminal law character of this regulation. As regards the legal consequences of the violation, the nature and functions of the regulation is important, which is inherent of the penalty within the general system of law (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 10.1.2).*

The Constitutional Court has already concluded with regard to a number of norms of LAVC that the penalties envisaged by them should be regarded as criminal penalties in the meaning of the Convention, and has especially emphasized that they have both the penal and the preventive function, which complies with the aim of applying a criminal penalty (*see Judgement of 20 June 2002 by the Constitutional Court in Case No. 2001-17-0106, and Judgement of 18 October 2012 in Case No. 2012-02-0106, Para 16).* If the respective penalty as to its character and nature complies with the second criterion, then its severity must reach the scope envisaged by the third criterion.

The European Court of Human Rights, in its turn, has developed its judicature in cases on ensuring fair judicial proceedings in connection with such violations in road traffic, which had not been envisaged in the criminal laws of the respective states and the penalty imposed for which had not been significant or substantial (*see, for example, Judgement of 18 March 2010 by ECHR in the case "Krumpholz v. Austria").*

Moreover, the European Court of Human Rights has noted that even minor violations of road traffic rules should be considered criminal offence in the meaning of Article 6 of the Convention *(see Judgement of 21 February 1984 by ECHR in the case "Öztürk v. Germany", Para 46 –54, and Judgement of 25 August 1987 in the case "Lutz v. Germany", Para 182),* and has concluded that also the procedure of imposing penalties for an offence like this fell within the scope of Article 6 of the Convention *(see, Judgement of 19 October 2004 by ECHR in the case "Falk v. the Netherlands").*

It has been noted also in legal science that "an administrative violation, as to its essence, can be equalled to criminal cases" *(Litvins G., Aperāne K. Administratīvā pārkāpuma lietvedība ceļu satiksmē. Rīga, 2011, p. 7)* and that "cases of administrative violation are to be considered criminal cases in the meaning of Article 6 of the

Convention, since these are connected with the application of a punishment that can be equalled to a criminal penalty – imposing of a monetary fine or arrest. Both the fine and the arrest have the punitive nature, typical of penalties from the criminal field, thus, these penalties correspond to a penalty in a criminal case" *(Latvijas Republikas Satversmes komentāri. VIII nodaļa. Cilvēka pamattiesības. Autoru kolektīvs prof. R. Baloža zinātniskā vadībā. Rīga: Latvijas Vēstnesis, 2011, pp. 144 –145).*

Thus, the penalty which is applied for the administrative violations envisaged in part one to part twenty-four of Section 149^8 of LAVC can be equalled to a criminal penalty in the meaning of the Convention, and the obligation of the State to define a procedure for applying such penalty, which would comply with the level of protection of fundamental rights set in this Article, follows from Article 92 of the Satversme.

14. To examine the compliance of the contested regulation with Article 92 of the Satversme, it must be established, whether it can cause adverse consequences for persons and what kind of consequences.

14.1. In accordance with Section 43^6 (3), (5) and (5^2) of RTL a report-decision is drawn up for an automatically recorded violation in the absence of the driver, which within three working days after its adoption is sent to the owner of the vehicle. The owner has the obligation to forward this report to the person, who at the moment when the violation was committed was driving the vehicle.

The contested regulation doe not *expressis verbis* state either to whom and for what the penalty is imposed, or who and within what term has to pay it. Section 149^8 LAVC, in its turn, envisages that the respective administrative penalty is imposed upon the driver of the vehicle.

In accordance with Section 43^6 (7) of RTL, if the fine imposed by the report-decision has not been paid within the term set by LAVC, adverse consequences set in for the owner of the vehicle. I.e., a notation is made in the respective state information system regarding prohibition, until the fine is paid, to perform the State technical inspection of the vehicle, with which the offence was committed, and to register it in these systems. In accordance with Section 43^6 (8) of RTL, if the imposed fine has not been paid within the term set in LAVC (except in cases when at the moment of

committing the offence the vehicle was not in the possession of the owner due to unlawful activity of other persons) it is collected from the owner of the vehicle (hereinafter also – the adverse consequences envisaged by the contested regulation).

Section 20 (5) of RTL envisages the obligation of vehicle's owner, upon request from the State Police, to provide information about the person, who was driving the vehicle or was entitled to use it. However, even though these obligations are imposed upon the owner of the vehicle, according to the contested regulation even in case, when the owner not only is able to inform about the person, who at the moment of committing the offence was driving the vehicle, but also to prove that the vehicle had been transferred in the disposal of this person, no procedure has been established according to which this person could, upon his own initiative, submit this information to State institutions and demand that the adverse consequences would immediately set in for the respective driver of the vehicle. The State Police in its opinion notes that it, when deciding on imposing penalties for an automatically recorded violation, does not upon its own initiative perform actions to identify a concrete natural person, who at the moment of committing the offence was driving the vehicle, neither does it request the owner of the vehicle to provide information about the person, who was driving the vehicle. The State Police holds that the contested regulation, essentially, prohibits it to take such actions (*see Case Materials, p.143).*

14.2. In view of the abovementioned, as the result of applying the Procedure envisaged by the contested regulation, a number of actual situations can occur:

1) the administrative violation is committed by the driver of the vehicle, who is also its owner. In such a case either the penalty or the adverse consequences of the contested regulation affect the person, who is guilty of committing the offence;

2) the administrative violation is committed by the driver of the vehicle, who is using the vehicle lawfully, but is not its owner. The owner of the vehicle hands over the report-decision to this person, and he, voluntarily, within the deadline set by LAVC, pays the fine. In this case the penalty affects the person, who is guilty of committing the administrative violation. The adverse consequences envisaged by the contested regulation, however, does not affect any of the persons;

3) the administrative violation is committed by the driver of the vehicle, who is using the vehicle lawfully, but is not its owner. The owner of the vehicle does not forward the report-decision to this person. In this case the adverse consequences envisaged by the contested regulation affect the owner, because he has failed to fulfil his duty to forward the report-decision to the person, who at the moment of committing the violation was driving it;

4) the administrative violation is committed by a driver, who is using the vehicle lawfully, but is not its owner. The owner of the vehicle forwards the report-decision to this person, but he fails to pay the fine within the set term. In this case the adverse consequences envisaged by the contested regulation affect the owner, because another person has failed to fulfil its obligation to pay the administrative fine. Thus, essentially, the adverse consequences affect a person, who is not guilty of not abiding by an order. The only possibility for the owner to avoid these adverse consequences is to pay the fine for a violation, which has been committed by another person;

5) the administrative violation is committed by a driver of the vehicle, who is not its owner and is driving the vehicle unlawfully. Pursuant to Section 43^6 (7) of RTL, in this case adverse consequences do not set in for the owner of the vehicle, since the prohibition noted in the respective State information systems on the prohibition to take the State technical inspection of the vehicle with which the violation was committed, until the fine is paid, is deleted, if it is established that the vehicle at moment of committing the violation was not in the possession of the owner due to unlawful activities of another person.

Thus, in the fourth described situation the adverse consequences envisaged by the contested regulation may affect also such owner of a vehicle, who is not guilty of unlawful actions. Therefore the Constitutional Court first of all shall assess, whether the legal regulation, which allows a situation like this, is compatible with the second sentence of Article 92 of the Satversme.

15. The Ombudsman notes that a penalty is a coercive and enforced measure, which the State has established in law and which is applied to a person, who has committed a punishable violation of rights. If the enforcement of the penalty affects a person, who has not committed the respective violation, then this is a violation of the

presumption of innocence, enshrined in the second sentence of Article 92 of the Satversme and the second part of Article 6 of the Convention.

15.1. The presumption of innocence is a constitutional fundamental right, which is mainly manifested in criminal proceedings. Its content has been revealed in the case law of the Constitutional Court (*see Judgement of 23 February 2006 by the Constitutional Court in Case No. 2005-22-01, Para 4).* The essence of the presumption of innocence is that the person, who brings the charges, has the obligation to provide sufficient proof of the person's guilt, and not the accused. However, this does not mean that the law cannot include presumption about some actual circumstances, which, in turn, point to the guilt or liability of a person or a group of persons *(see Grabenwarter C. Europäische Menschenrechtskonvention. München: C. H. Beck, 2005, p. 335).*

The European Court of Human Rights has concluded that a person's right to be regarded innocent and to make the prosecution prove statements against him is not absolute. Since the legal presumption of a fact operates in all legal systems, the Convention, in principle, does not prohibit it – under the condition that the states, parties to the Convention, apply this presumption reasonably, taking into account the risks in its application and retaining the private person's right to counsel (*see Judgement of 7 October 1988 by ECHR in the case "Salabiaku v. France", Para 28).* Moreover, in connection with the violations of road traffic rules, the European Court of Human Rights has admitted that the legal presumption of a fact may be the grounds for the strictly defined liability of the vehicle's owner or liability without guilt (*see Judgement of 19 October 2004 by ECHR in the case "Falk v. the Netherlands").*

The Constitutional Court also has concluded that the right to a fair trial cannot be regarded as absolute (*see Judgement of 4 January 2005 by the Constitutional Court in Case No. 2004-16-01, Para 7.1).* Without denying the special importance that the presumption of innocence has in criminal proceedings, the assumption that it is absolute would contradict the principle of uniformity of Satversme and the fundamental rights of other persons envisaged in the Satversme, as well as other norms of the Satversme (*compare: Judgement of 22 October 2002 by the Constitutional Court in Case No. 2002-04-03, Para 2 of the Substantial Part).* Therefore, the statement included in the application that the second sentence of Article 92 of the

Satversme envisages the obligation of the State to identify, in each case, the concrete person, who has committed the violations envisaged in Section 149^8 (1) to Section 149^8(24) of LAVC, is ungrounded.

The fundamental right established by the second sentence of Article 92 of the Satversme – the presumption of innocence – is not absolute and in particular cases allows the legislator to envisage the legal presumption of a fact also in such legal relationships, to which this fundamental right applies.

15.2. In view of the aforementioned, to assess, whether the second sentence of Article 92 of the Satversme allows deviations from the requirements that the persons does not have to prove his innocence and, whether under the specific circumstances the legal presumption of a fact is allowed, it must be cumulatively established, whether the legal presumption of a fact:

1) has been duly defined in law and is unambiguously applied to precisely defined, specific situations. I.e., it must be established, whether the law envisages such a presumption *expressis verbis* and whether it is envisaged to apply it to a restricted range of situations;

2) has been established for reaching a legitimate aim. I.e., it must be verified, whether this presumption has been established to protect essential interests of the State, society or private persons;

3) is balanced, by ensuring to a person the other procedural guarantees belonging to the content of the right to a fair trial, moreover, whether the person can exercise these with sufficient ease. I.e., it must be established, whether the person, to whom the legal presumption of a fact is applied, has been simultaneously ensured the possibility to refute this presumption, by using proof, which is at his disposal or can be obtained in a simple way, and thus, nevertheless, prove his innocence (*compare to Judgement of 7 October 1988 in the case "Salabiaku v. France", Para 26 –30, and Judgement of 30 March 2004 in the case "Radio France and Others v. France", Para 24)*.

Thus, it must be assessed, whether the contested regulation affects the presumption of innocence and complies with all the abovementioned criteria.

15.3. The case materials contain divergent opinions on the kind of liability that is envisaged for the vehicle's owner, the legal basis for the adverse consequences envisaged by the contested regulation and whether the contested regulation envisages the legal presumption of a fact.

The Ministry of Justice holds that the guilt of the vehicle's owner for committing the respective violation envisaged in the Latvian Administrative Violations Code is presumed, without establishing, whether the owner of the vehicle has actually committed the violation. However, a vehicle may be owned also by a legal person; but a legal person, being a legal fiction, cannot drive a vehicle.

The opinion that the report-decision on an administrative violation, is an administrative acts, issued with regard to individually defined natural person – the driver of the particular vehicle, who is known to the vehicle's owner, has been established in the case law of the Supreme Court (*see, Decisions of 26 January 2007 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-107, Para 11).*

The Ministry of Interior, in its turn, holds that the liability of the vehicle's owner follows from Section 2347(2) of the Civil Law and his obligation as a thoughtful and careful proprietor to know, who in the particular case had been driving it. However, this Section of the Civil Law envisages the civil law liability of the owner, not the administrative liability.

Section 20(2) and Section 20(3) of RTL set out that the owner of a vehicle may not permit a person, who is under the influence of alcohol or intoxicating substances, or does not hold a driver's licence of the appropriate category, to drive the vehicle. Furthermore, the fifth part of this Section envisages that the owner of the vehicle is obliged, upon the request of the State Police, to provide information on the person, who was driving or had the right to drive the vehicle. However, neither Section 20 of RTL, nor any other norms, nor any other legal acts envisage imposing an administrative penalty upon the owner of the vehicle, nor contain the presumption that the vehicle's owner had been driving it at the moment of committing the automatically recorded violation.

Section 43^6 (8) of RTL envisages that if the fine imposed upon the driver of the vehicle is not paid within the set term, it must be collected from the owner of the

vehicle. Thus, this legal norm imposes upon the owner of the vehicle the liability for not complying with the term set for paying the fine imposed upon the driver. However, this norm cannot be perceived as such, which envisages the vehicle owner's liability for the violations of road traffic rules, committed with a vehicle owned by him.

Thus, the legal acts do not envisage the guilt or liability of the vehicle owner for the administrative violations, committed by another persons with a vehicle owned by him.

15.4. The Ombudsman holds that Section 272 of LAVC defines a broad obligation of the State to conduct investigation for identifying the guilty person, thus, also the obligation to identify the person, who has committed a violation envisaged by Section 149^8 of LAVC. The contested regulation is in conflict with this obligation, since it does not identifying a concrete person in cases when the violation is recorded automatically.

The Constitutional Court has already noted that the Saeima has discretion to choose, in which of a number of laws to include the specific regulation (*see Decision of 16 April 2008 by the Constitutional Court on terminating legal proceedings in Case No. 2007-21-01, Para 17)*. Therefore the fact *per se* that the legislator has envisaged in the special legal norms of RTL the obligations of the vehicle's owners, for example, to know, in whose possession the vehicle had been or is in a certain period of time, or the obligation to forward the report-decision to the person, who had been driving the vehicle at the particular moment, does no contradict Article 92 of the Satversme. A vehicle is to be regarded as a source of increased danger, and the State may impose special obligations upon its owner and envisage penalties for failing to meet these obligations. The proportionality of this burden of obligations from the point of view of constitutional law should be examined, predominantly, in the context of Article 105 of the Satversme. However, in the case under examination the constitutionality of the contested regulation is not questioned in this regard.

The fact that Road Traffic Law contains special legal norms, which regulate the liability and the imposing of penalties for administrative violations in road traffic differently than the general legal norms included in the Latvian Administrative Violations Code, does not contradict Article 92 of the Satversme either. LAVC norms are included in law, and they have the same legal force as RTL norms. The assessment

of reciprocal compatibility of legal norms of equal legal force does not fall within the jurisdiction of the Constitutional Court. Moreover, Section 9(3) of LAVC directly provides that the particularities of the administrative liability of the owner of a source of increased danger – thus, also of a mechanical vehicle, can be defined in other laws.

The level of clarity that a legal norm must attain in case, when a person is applied a penalty, which is equalled to a criminal penalty, must be assessed, predominantly, by taking into consideration the specific requirements envisaged by the second sentence of Article 92 of the Satversme.

15.5. As noted in Para 11 of this Judgement, the principle *nullum crimen, nulla poena sine lege* (a person can be recognised as guilty and punished only for such action, which has been recognised as punishable in accordance with law) follows from the second sentence of Article 92 of the Satversme.

Moreover, the norms of Article 92 of the Satversme in this regard must be interpreted in interconnection with Article 90 of the Satversme. The Satversme envisages a person's subjective public right to be informed about its rights and obligations. A norm adopted by the legislator should be worded in such a way that an individual, in case of necessity seeking appropriate advice, would be able to understand this norm and regulate his actions (*see Judgement of 30 March 2011 by the Constitutional Court in Case No. 2010-60-01, Para 15.2, and Judgement of 1 November 2012 in Case No. 2012-06-01, Para 7.2).*

15.6. If Road Traffic Law envisaged the liability of a vehicle's owner for the violations of road traffic rules, then Article 92 of the Satversme in interconnection with Article 90 would demand that this obligation and liability were defined in the Latvian Administrative Violations Code and in Road Traffic Law in accordance with the principle *nullum crimen, nulla poena sine lege*. It must be noted that Section 43^6 (2) of RTL in the wording of the Law of 26 May 2005 envisaged that the administrative penalty for an automatically recorded violation was imposed upon the owner of the vehicle, except in cases, when at the moment of committing the violence, it had not been in the possession of the owner due to unlawful actions by another person. Thus, the regulation, which was previously in force, envisaged the liability of a vehicle's owner for violations committed with a vehicle owned by him.

The contested regulation is envisaged for sanctioning for violations referred to in Section149[8] of LAVC. Parts one to twenty-four of Section 149[8] of LAVC envisage that the respective administrative penalty is imposed upon the vehicle's owner. The aim of the contested regulation is to establish a procedure for applying the penalty in those cases, when the violation has been recorded in a specific way. The contested regulation envisages the obligation of the vehicle's owner to forward the received decision to the concrete driver of the vehicle. However, neither LAVC, nor the norms of RTL envisage penalty for failure to fulfil this obligation.

The research, conducted under the leadership of the European Commission, on the joint policy for transport development, which the Ministry of Transport has made a reference to, notes that "automated speed enforcement should be developed further and taken into wider use. To improve the cost-effectiveness of automated enforcement, legislative changes are needed in some countries so that the owner of the vehicle can be held responsible for speeding offences" *(see: CORDIS. Managing Speeds of Traffic on European Roads, http://cordis.europa.eu/transport/src/masterrep.htm#3.7, accessed on 6 March 2013).* I.e., this study recommends adopting such legal regulation, which would *expressis verbis* envisage the liability of the vehicle's owner for violations committed with the vehicle owned by him. Contrary to what was sated by the Ministry of Transport, Latvia has not followed these recommendations, since the liability for the respective violations is envisaged for the driver of the vehicle, not its owner.

Since neither the contested regulation, nor any other RTL norms, Section149[8] of LAVC, nor any other regulatory enactments envisage that the owner of the vehicle should be made liable for the violation referred to by this Section of LAVC, the assumption that the owner of the vehicle is liable for the violation envisaged by the respective norm, first of all comes into collision with the principle *nullum crimen, nulla poena sine lege*.

Thus, the adverse consequences envisaged by the contested regulation set in for the owner of the vehicle, if he has not been driving the vehicle at the moment when the violation was committed, in connection with an administrative violation committed by another person.

15.7. The European Court of Human Rights, once, in examining the case of the liability of a vehicle's owner in Austria in a situation, when a violation of road traffic rules had been committed by a vehicle owned by him, but the owner refused to identify the driver of the vehicle, established that Austrian legal acts did not contain the presumption that the owner of the vehicle should be recognised as the person, who was driving the vehicle at the moment of committing the violation, unless he proved the opposite. Likewise, Austrian legal acts did not envisage the liability of the vehicle's owner for the violations of road traffic rules committed with a vehicle owned by him. In view of these circumstances, the European Court of Human Rights concluded that the Austrian state institutions, by applying this presumption, had shifted the burden of proof from prosecution to the private person.

The European Court of Human Rights has assessed the admissibility of a situation like this in interconnection with the legal remedies available to a person. Upon establishing that in the concrete case legal remedies, which would allow a person to prove his innocence, were not ensured, the European Court of Human Rights concluded that by applying the aforementioned presumption under the conditions indicated, not only the duty to prove, but also the responsibility for investigating the violation was transferred upon the shoulders of a private person and recognised that, thus, a violation of the first and the second part of Article 6 of the Convention had occurred (*see Judgement of March18 2010 by the ECHR in the case "Krumpholz v. Austria", Para 40 and 41).*

In the case under review the contested regulation, essentially, does not envisage the legal presumption of a fact (assumption that at the moment when the violation was committed the owner was driving the vehicle), but transfers the obligation (to identify the guilty person and to ensure that the fine is paid) from State institutions upon a private person – the owner of the vehicle.

In this case, it is not the compliance of the contested regulation with the presumption of innocence that must he examined, but the compliance of the contested regulation with the procedural guarantees envisaged by the first sentence of Article 92 of the Satversme, i.e., the right to be heard and access to court.

16. The Constitutional Court has noted that "the principle of justice contains requirements, necessary for fair procedure for examining cases, and one of such requirements is *audiatur et altera pars.* This means, that both parties to the proceedings have the right to state their opinion with regard to the given issue, i.e., the right to be heard in the case under examination" (*Judgement of 23 April 2003 by the Constitutional Court in Case No. 2002-20-0103, Para 5).* The Constitutional Court has also concluded that human dignity requires that a person is not only the object of the proceedings, but he should be given the possibility to express one's opinion before a decision, which affects his rights, is adopted, i.e., a party to the proceedings must be given the possibility to express his opinion to the extent, which is proportional to the subject of the proceedings and the severity of the impeding penalty (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-0, Para 11).*

16.1. Irrespectively of the fact, whether the respective violation was committed by the driver of the vehicle, who is not the owner of the vehicle, or driver, who is the owner of the vehicle, the contested regulation, respectively, envisages to impose a penalty upon these persons or the obligation to ensure that the fine is paid. However, the contested regulation does not envisage the possibility for these persons to express their opinion about the existence of the violation and its circumstances, before the penalty is imposed. Thus, the contested regulation restricts these persons' right to be heard.

If the violation is committed by a driver of the vehicle, who is not the owner of this vehicle, then the owner has no possibility to indicate the person, who has committed the violation and whose liability for this violation is envisaged in law. Moreover, the owner is denied the possibility to be heard, before the adverse consequences envisaged by the contested regulation set in.

Thus, the contested norms envisage a restriction to an element of the right to a fair trial – to the right to be heard.

16.2. The Constitutional Court has concluded that the right to a fair trial may be restricted, *inter alia*, that persons' right to be heard before the penalty is imposed may be restricted. However, such restriction must be envisaged by law, must be established for a legitimate aim and must comply with the principle of proportionality.

Moreover, if the right of a person to be heard before the penalty is imposed is not envisaged, it must be verified, whether the person has been ensured due possibility to express his opinion in court (*see Judgement of 5 November 2008 by the Constitutional Court in Case No*. 2008-04-01, Para 13).

Thus, the compatibility of the contested regulation with the right to be heard must be assessed simultaneously with its compatibility with the right to access to court.

17. The right to a fair trial means also that a person has access to court *(see, for example, Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-01, Para 8)*. Moreover, Article 90 of the Satversme in interconnection with the first sentence of Article 90 provides that the procedural norms that regulate access to court, adopted by the legislator, must be sufficiently clear and unambiguous (*see Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 7.3).*

The Ombudsman notes that the adverse consequences envisaged in the contested regulation set in for the owner of a vehicle, however, he has no access to legal remedies for preventing such consequences. However, the Saeima and a number of summoned persons hold the opinion that the possibility to contest and appeal against the notification for the unpaid fine ensures to the owner of the vehicle the administrative procedure in an institution and in court in sufficient extent, as well as the regulation on untypical cases in the seventh and eight part of Section 43^6 of RTL.

As concluded in Para 16.1 of this Judgement, the contested regulation does not define a procedure according to which the owner of the vehicle could inform the State authorities that at the moment when the violation was committed he was not driving the vehicle and indicate the person who was doing that.

Section 43^6 (4) of RTL, in the wording of 26 May 2005 of the Law, envisaged: "If the owner (possessor, holder) of the vehicle contests or appeals the adopted decision and, upon examining the application or the complaint, the driver of the vehicle is identified, the penalty for the committed violation is applied to the driver." This norm was replaced by the regulation, which is in force, upon the proposal of the Parliamentary Secretary of the Ministry of Transport during the third reading of the

draft law "Amendments to Road Traffic Law" on 15 December 2005 (*see Draft Law No. 1356 of the 8th Saeima of the Republic of Latvia, http://helios-web.saeima.lv/saeima8/mek_reg.fre, accessed on 6 March 2013).*

Section 43^6 (5) of the RTL, which is in force, sets out that the report-decision may be contested and appealed by the driver of the vehicle, who at the moment when the violation was recorded drove the vehicle. The owner of the vehicle, who did not drive the vehicle and for whom adverse consequences set in if the term for paying the fine is not met, does not have this right.

In accordance with Section 279(1) of LAVC, a person, who has been made administratively liable, as well as a victim in a case of administrative violation, may contest the adopted decision at a higher institution. If there is no higher institution, this decision may be appealed against in court. In accordance with Section 288 of LAVC, a person, who has been made administratively liable, as well as a victim may appeal the decision adopted by a higher institution in court in accordance with the declared place of residence, but a legal person – according to its legal address in Latvia. Thus, a person, who has been made administratively liable for committing a violation envisaged by Section 149^8, part one to twenty-four, i.e., the driver of the vehicle, has the right to turn to court.

The Department of Administrative cases of the Supreme Court Senate has recognised in its case law that the owner of the vehicle (who is not the driver of the vehicle, who committed the violation) is not person with regard to whom a decision has been adopted in the case of administrative violation, therefore this person does not have the right to appeal against a decision in a case of administrative violation (*see Judgement of 15 March 2006 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-102, Para 11).* This finding is grounded in the reasoning that the rights or legal interests of the vehicle's owner are not affected by a decision, whihc is adopted regarding administrative sanctioning of the driver (*see Judgement of 24 October 2006 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-569, Para 9.2).*

At the same time the insight that the owner of the vehicle (who is not the driver of the vehicle, who has committed the respective administrative violation) can appeal against the notification on the unpaid fine as an administrative act has become

enshrined in the case law of administrative courts. I.e., it is concluded from Section 43^6 (5^2) and Section 43^6 (8) of RTL: if the vehicle's owner is not the same person, who at the respective moment was driving the vehicle, then the notification on the unpaid fine, which, essentially, is a document adopted during the process of enforcing administrative violation, which directly creates legal consequences to a third person – the owner of the vehicle. In this case the notification on the unpaid fine is to be considered an administrative act and the vehicle's owner can appeal against it in court (*compare Judgement of 26 January 2007 by the Department of Administrative Cases of the Supreme Court Senate in Case No. SKA-107, Para 8 and 9).*

Thus, the owner of the vehicle may appeal in court only against the notification on the unpaid fine. This means that he, first of all, must wait until the adverse consequences envisaged by the contested regulation set in. Hence, the owner cannot appeal against the penalty imposed and point to the circumstances of the violation or even the actual perpetrator of the offence, even if he feels reasonable convinced that the person, who has committed the violation, will not pay the fine (for example, this person has died, has been recognised as legally incapable or has left the country) or that the recovery of the paid fine from this person will be impossible (for example, the person has been declared insolvent). Moreover, if this notification is contested, the administrative court has to verify only, whether the circumstances envisaged by the contested regulation exist, i.e., whether the fine has not been paid, the court, however, does not examine the validity of imposing the penalty.

Thus, in this case the vehicle owner's right to access to court is restricted.

18. The Constitutional Court has concluded that the right to free access to court, guaranteed by the first sentence of Article 92 of the Satversme, may be restricted only if the cases of utmost necessity. If such a restriction, however, has been imposed, it must be assessed, whether it has been done by a law, adopted in due procedure, whether the restriction has a legitimate aim and whether the restriction is proportional to this aim (*see Judgement of 27 June 2003 by the Constitutional Court in Case No. 2003-04-01, Para 1.2. of the Substantive Part; Judgement of 7 October 2010 in Case* No. *2010-01-01, Para 12, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 9).*

Thus, it must be assessed, whether the restrictions to the fundamental right envisaged in the first sentence of Article 92 of the Satversme, complies with the respective criteria.

18.1. The contested regulation has been adopted and promulgated in accordance with the procedure envisaged by the Satversme and the Saeima Rules of Procedure.

Thus, the restrictions to fundamental rights, which follow from the contested regulation, have been established by law.

18.2. All restrictions to fundamental rights must be based upon circumstances and arguments, justifying their need, i.e., the restrictions must be imposed because of important interests – a legitimate aim *(see, for example, Judgement of 14 March 2006 by the Constitutional Court in Case No. 2005-18-0, Para 13).*

When restrictions to rights are set, in the process of Constitutional Court, the institution, which has adopted the contested act, has the obligation to identify and substantiate the legitimate aim of such restrictions (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 12).* The Saeima has not indicated such an aim in its written reply. However, it follows from the written reply of the Saeima and the additional information provided that the legitimate aim of the contested norms is connected with the possibility that vehicle as a source of increased danger could inflict harm upon persons.

The Constitutional Court has concluded that the State has to protect a person's life not only against its own actions, but also the actions of other persons. Moreover, the aforementioned obligation of the State contains not only the requirement to adopt norms aimed at protecting human life, but also to establish an effective system for supervising the implementation of these norms (*see Judgement of 7 January 2010 by the Constitutional Court in Case No. 2009-12-03, Para 14.2).*

One of the aims of RTL, as indicated in Section 2(1) of this Law, is to prescribe the organisational and legal basis for road traffic procedure and road traffic safety in Latvia, in order to protect human life and health, the environment, as well as property owned by natural and legal persons.

The studies in the field of road traffic reveal that exceeding speed limit, which is the major road traffic safety problem both in Latvia and throughout Europe, not only significantly increases the risk of accidents, but also the probability that the accident

will be severe or with fatal consequences *(see http://ec.europa.eu/ transport/road_safety/topics/behaviour/speeding/index_lv.htm and http:// www.etsc.eu/documents/05.05%20-%20Press%20release_PIN%20Flash% 2016.pdf, accessed on 6 March 2013).*

Thus, the measures that the states introduce to prevent exceeding the speed limits are aimed at the protection of other persons' rights – the right to life and the right to health, as well as to protect property.

As the Ministry of Interior notes, searching for the driver after automatic recording of the violation would require from the State disproportionally large resources and persons would have rather extensive possibilities to evade administrative liability for the committed violations. This, in its turn, would cause a feeling of impunity and could lead to serious disturbances to public order (*see Case Materials, p.149*).

As regards violations of road traffic rules, the European Court of Human Rights has also recognised that the member states of the Convention may envisage in their regulatory enactments not only the legal presumption of a fact, but also strict liability of the vehicle's owner. Such action is justifiable to increase the level of road traffic safety, to not leave unpunished automatically recorded violations of road traffic rules and to avoid creating excessive burden to State institutions in investigating and sanctioning for such offences (*see Decision of 19 October 2004 by ECHR in the case "Falk v. Netherlands")*.

Thus, the restriction to the right to fair trial, established by the contested regulation, has a legitimate aim – the protection of other persons' rights.

18.3. To establish, whether the principle of proportionality has been complied with, it must be assessed, whether:

1) the measures chosen by the legislator are appropriate for reaching the legitimate aim;

2) more mitigating measures exist for reaching the legitimate aim;

3) the benefit gained by society exceeds the damage caused to the rights and legal interests of an individual. If the examination of the norm leads to the conclusion that it is incompatible with even one of these criteria, then it is incompatible with the principle of proportionality and is unlawful (*see Judgement of 19 March 2002 by the*

Constitutional Court in Case No. 2001-12-01, Para 3.1. of the Substantive Part, and Judgement of 20 April 2012 in Case No. 2011-16-01, Para 12).

18.3.1. The measures chosen by the legislator are appropriate for reaching the legitimate aim, if this aim is reached with the concrete legal regulation.

The case contains no dispute regarding the issue, whether the contested regulation reaches the legitimate aim, when the person guilty of committing the automatically recorded violation – the owner of the vehicle, if he himself has driven the car, or if the driver of the vehicle, who is not its owner, pays the imposed fine,

However, as regards cases, when the vehicle's owner is not the person guilty of the automatically recorded violation, but is forced to pay the fine instead of the driver of the vehicle, the parties to the case have dissenting opinions.

G.Litvin's opinion can be upheld: if the guilty person is not identified and his actions are not rectified by appropriate and proportional penalty, this person has no incentives to refrain from repeated offending (*see Case Materials, p. 158*). Thus, one of the aims of administrative sanctioning – the special prevention of violations – is not reached.

However, in these cases another aim of administrative penalty is reached – the general prevention of violations. I.e., automatic recording of violations increases the scope of performed control and, thus, the probability that a violation will be followed by a punishment. This deters other persons from offending.

Thus, the contested regulation is appropriate for reaching the legitimate aim.

18.3.2. The restriction to rights set out in the contested norms is necessary in the absence of other means, which would be as effective and less restrictive to the concrete fundamental right (*see, for example, Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.2).*

The case materials contain information about other possible measures for reaching the legitimate aim.

Firstly, the Ombudsman has pointed to the regulation on automatic recording of violations of road traffic rules in the Republic of Lithuanian. The equipment used in this country records not only the vehicle with which the violation is committed, but also its driver. The Police send notification to owner of the vehicle on the fact of

violation. This notification sets concrete time, when the owner has to come to police to examine the issue of imposing a fine. The police officers must establish, whether the owner and the driver, recorded by the automatic control equipment, is one and the same person (*see Case Materials, p.9).*

Secondly, G. Litvins points to the regulation, which is in force in the Republic of Estonia. In this country a notification is sent to the vehicle's owner, informing him that road traffic rules have been violated with his vehicle. Upon the receipt of the notification, the owner has the right to turn to police and provide information on the actual driver of the vehicle (*see Case Materials, p. 159*). Thus, the automatically recorded violation serves as the basis for initiating proceedings.

Thirdly, the case materials contain information that regulation, which envisages searching for the driver, who has committed violation, is in force in Germany and Sweden, but Belgium, France, Italy and Belgium has regulation, which is similar to the contested one, pursuant to which the general principle is that the particular offender is not searched at all (*see Case Materials, p. 20*). However, in such cases, the vehicle's owner has access to appropriate legal remedies, and a procedure has been established, according to which he can, upon his own initiative, identify the person, who drove the vehicle at the moment of committing the violation.

However, in dealing with particular issues within Latvia's system of law, the legal regulation of other states cannot be applied directly, except for exceptional cases provided by law. Comparative law analysis must always take into consideration the different legal, social, political, historical and systemic context (*see Judgement of 8 June 2007 by the Constitutional Court in Case No. 2007-01-01, Para 24.1, and Judgement of 14 March 2011 in Case No. 2010-51-0, Para 17).* The method of comparative law cannot be fully excluded, however, similar legal norms or legal institutions in different countries can have very different content (*see Judgement of 1 November 2012 by the Constitutional Court in Case No. 2012-06-01, Para 13.3.3).* Therefore, in the concrete case, the existence of such regulation in other countries is not sufficient grounds for concluding that alternatives for reaching the legitimate aim exist under Latvia's conditions.

Moreover, if the regulation adopted by other countries were to be implemented, the State institutions would have additional amount of work, and, thus, it cannot be ascertained that such regulations would reach the legitimate aim in the same quality.

Thus, no substantiation has been provided for the existence of alternative measures, with which the legitimate aim would be reached in the same quality.

18.3.3. Assessing the compliance of the restriction to the fundamental rights with the legitimate aim, it also must be verified, whether the adverse consequences caused to a person by the restriction to the fundamental rights do not exceed the benefit the society in general gains from this restriction. Hence, the Constitutional Court must identify the interests to be balanced in this case and establish, which of these interests should be granted priority.

18.3.3.1. To the extent that the restriction to the fundamental rights enshrined in Article 92 of the Satversme pertains to the driver of the vehicle and is manifest in the fact that he is not heard before the penalty is imposed, it must be taken into consideration that the contested regulation establishes a procedure for imposing an administrative penalty for a violation of rather simple content. To detect it, there is no need to investigate complex circumstances. If the violation is recorded automatically, then the possibility that the concrete piece of equipment has not been in technically good condition, must be taken into consideration, however, there can be no doubt whether this piece of equipment has treated the person committing the violation in a subjective way. Moreover, as concluded in Para 17 of this Judgement, the driver of the vehicle, even though after the penalty has been imposed, still has the possibility to express his opinion by contesting and appealing the report-decision, and the institution or the court, if necessary, may amend the amount of fine or release the person from the penalty.

The State Police has provided information that in the period from 1 January 2012 to 30 September 2012 it had adopted 269 743 report-decisions on automatically recorded administrative violations. Of these, 5 778 decisions had been contested *(see Case Materials, p. 143)*. These data show that in cases of automatically recorded violations of road traffic rules, disputes arise rather infrequently – in approximately two per cent of cases.

The benefit, which the society gains from the possibility to accustom drivers effectively to disciple, finds expression as the protection of persons' life and health, as well as in ensuring public order. The benefit, which the society gains from simplifying the procedure, without imposing the obligation upon State institutions to establish, on their own initiative, which person drove the vehicle at the moment when the violation was committed, finds expression in the speed and effectiveness of the procedure, as well as reduction of its costs, and thus, in savings to the state budget. The saving of time for all persons involved in the proceedings is also ensured, since also the person, who has been imposed the penalty and does not deny his guilt, saves time. This person does not have to lose time by coming to the institution and providing explanations in writing.

Thus, the contested regulation, to the extent it pertains to cases, when the restriction to the fundamental rights enshrined in Article 92 of the Satversme is incurred by the driver of the vehicle and is manifest as the person not being heard before the penalty is imposed, is proportional. Thus, in this part the contested regulation is compatible with Article 92 of the Satversme.

18.3.3.2. To the extent the contested regulation applies to cases, when the restriction to the fundamental rights established by Article 92 of the Satversme pertains to the vehicle's owner, who is not the driver, who has committed the violation, and the driver fails to pay the respective fine, the restriction to a person's fundamental rights is more significant. I.e., the owner of the vehicle may only appeal in court the notification for the unpaid fine. The administrative court, in its turn, has to verify only whether the circumstances envisaged by the contested norm exist, i.e., whether the fine has not been paid, however, within this stage of the administrative proceedings the court is not obliged to assess the validity of imposed penalty (*see Para 17 of this Judgement).* Thus, a situation may occur that the state transfers its obligation –to identify the offender, by using the investigative and coercive means at its disposal, and make him pay the fine, essentially, upon the shoulders of private persons, by requesting the private person to pay the fine instead of the actual offender and then, using the means at his disposal, handle the legal relations with the offender.

Undeniably, the owner can use civil law measures to make the offender feel the adverse consequences, however, it must be taken into consideration that in this case

the owner must pay the respective fine before that. Otherwise the adverse consequences would set in for the owner, prohibiting him, for example, to undergo the technical inspection of the vehicle in due time and, thus, to use this vehicle in road transport.

It follows from the aforementioned, that the owner of the vehicle, who has not been driving the vehicle at the moment when the violation was automatically recorded, is not heard before the adverse consequences set it, and he has no right to contest the report-decision. Moreover, the regulatory enactments do not envisage procedure allowing him to inform timely the State institutions about the driver of the vehicle, if the driver is known to him. I.e., the owner has no procedural guarantees for identifying the offender timely and, thus, preventing the adverse consequences to himself. In this case a person has been substantially deprived of the right to fair trial.

The Constitutional Court has recognised that the restrictions to the right to a fair trial cannot be such that essentially deny the possibility to exercise this right. The right to turn to court can be restricted only to the extent this right is not deprived substantially (*see Judgement of 5 November 2008 by the Constitutional Court in Case No. 2008-04-01, Para 13).*

Likewise, the European Court of Human Rights has recognised with regard to violations of road traffic rules: if sufficient legal remedies are not ensured to a person, moreover, if the obligation to prove and the responsibility for the procedure is transferred to the person, this is to be recognised as a violation of the right to a fair trial (*see Judgement of 18 March 2010 by ECHR in the case "Krumpholz v. Austria", Para 41).*

The benefit that the society gains from the possibility to accustom effectively drivers to discipline by automatically recording violations and which is manifested in the protection of persons' life and health, as well as in ensuring public order, can be ensured both in the case, if the owner of the vehicle, upon the receipt of the report-decision, has the possibility to inform a State institution about the driver of the vehicle, who has committed the violation, and in the case, if there is no such possibility. However, if the person, who is actually guilty of the violation, may not feel the adverse consequences, if the owner of the vehicle pays the respective fine and does not

enforce collection against the driver of the vehicle, this benefit is decreased, not increased.

The benefit that society gains, by imposing upon the vehicle's owner the obligation to ensure payment of the fee for a violation, which he has not committed, is manifested as the simplification of the procedure in the State institution, decrease of expenditure and increase in the State budget revenue by collecting the administrative fine. However, this benefit does not counterbalance the fact that the respective person has been substantially deprived of the right to a fair trial.

Thus, the contested regulation, to the extent it does envisage the right of the vehicle's owner to contest and appeal against the report-decision in the case, if the automatically recorded violation has been committed by the driver of the vehicle, who was lawfully in the possession of the vehicle, does not comply with the principle of proportionality and, hence, with Article 92 of the Satversme.

19. In accordance with Section 32 (3) of the Constitutional Court Law, a legal norm, which has been recognised by the Constitutional Court as incompatible with a norm of higher legal force, shall be regarded as invalid as of the day when the Judgement by the Constitutional Court is published, unless the Constitutional Court has ruled otherwise. Pursuant to Para 11 of Section 31, if the Constitutional Court recognises a legal norm incompatible with a norm of higher legal force, it must set the moment as of which the respective norm becomes invalid.

The Constitutional Court, in exercising the rights granted to it by Section 32(3) of the Constitutional Court Law, must, to the extent possible, provide that the situation, which might develop after the moment, when the contested norms are recognised invalid, until the moment when the legislator has adopted new norms, would not cause infringements to persons' fundamental rights guaranteed by the Satversme, and would not cause significant harm to the interests of the State and society (*Judgement of 16 December 2005 by the Constitutional Court in Case No. 2005-12-0103, Para 25, and Judgement of 31 January 2013 in Case No. 2012-09-01, Para 16.1).*

It is possible to achieve the compatibility of the contested regulation with the Satversme not only by amending or recognising as invalid some norms included in it,

but also by other means, for example, by introducing amendments to the Latvian Administrative Violations Code or other regulatory enactments. The Saeima has not only the right, but also the obligation to draft and adopt regulation, decisive upon important issues in the life of the State and society (*see, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.3).* Thus, it is the right and the obligation of the legislator, not that of the Constitutional Court, to choose the appropriate solution. The contested regulation should be recognised as invalid only in case, if the Saeima would fail to meet this obligation in due time.

Thus, to ensure the compatibility of the contested regulation with the Satversme, the Saeima must introduce amendments to the regulatory enactments. The fulfilment of this obligation requires time, therefore the appropriate solution is to recognise the contested regulation invalid as of a concrete moment in the future.

However, by setting the date, as of which the contested regulation becomes invalid, the Constitutional Court must provide, to the extent possible, that during the period of drafting this regulation, there should be no incommensurate infringement of persons' fundamental rights.

The law grants to the Constitutional Court the authority to decide upon ensuring the enforcement of its Judgement, i.e., to define the legal consequences of its judgements. Simultaneously the law not only grants the authority to the Constitutional Court, but also imposes responsibility – its judgements should ensure legal stability and certainty in the social reality (*see Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 35.1, and Judgement of 31 January 2013 in Case No. 2012-09-01, Para 16.3).*

The Constitutional Court has concluded: if a person's rights established by the Satversme are infringed, the person has the right to turn to court, directly referring to the respective norm of the Satversme (*see Judgement of 5 December 2001 by the Constitutional Court in Case No. 2001-07-0103, Substantial Part).*

In the case under review the Constitutional Court draws attention to the fact that until the new legal regulation is adopted, the vehicle owner's rights to contest and appeal against the report-decision envisaged by Section 43 ^{6} of Road Traffic Law must be ensured by direct application of Article 92 of the Satversme. I.e., the right envisaged by the contested regulation to contest and to appeal the report-decision must

be granted not only to the driver of the vehicle, who at the moment of automatic recording of the violation was driving the vehicle, but also to the vehicle's owner, who at the moment of automatic recording of the violation was not driving the vehicle.

Pursuant to Section 30 – 32 of the Constitutional Court Law
the Constitutional Court

held:

1. To recognise Section 43 [6] of Road Traffic Law, insofar it does not envisage the right to contest and appeal the report-decision to the owner (possessor) of a mechanical vehicle, who has not been the driver of the vehicle at the moment of committing the violation, which was recorded by technical means (photo or video equipment), without stopping the vehicle, as incompatible with Article 92 of the Satversme of the Republic of Latvia and invalid as of 1 October 2013, unless the legislator has improved the regulation envisaged by the legal acts in conformity with the instructions included in this Judgement.

2. To recognise Section 43[6] of the Road Traffic Law, insofar it regulates recording the violations of road traffic rules with technical means (photo or video equipment), without stopping the vehicle, as well as regulation on applying and enforcing the penalty, in the remaining part as compatible with Article 92 of the Satversme of the Republic of Latvia.

3. To establish that until the moment the deficiencies of the aforementioned legal regulation are rectified, the fundamental rights envisaged in Article 92 of the Satversme of the Republic of Latvia of the persons referred to in Para 1 of the part of Ruling of this Judgement, shall be ensured by granting to them the same rights to contest and appeal the report-decision, which have been envisaged to the driver of the vehicle, who at the moment of recording the violation with technical means (photo and video equipment, without stopping the vehicle, was driving the vehicle.

The Judgement is final and not subject to appeal

The Judgement comes into force as of the day of its pronouncement.

The Presiding Judge G. Kūtris